

NEBRASKA



Workers' Compensation Court 59th Annual Report

Fiscal Year 2001:

July 1, 2000 through June 30, 2001



Nebraska Workers' Compensation Court

59th Annual Report

Fiscal Year 2001:

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Michael K. High,
Presiding Judge

Michael P. Cavel,
Judge

James R. Coe,
Judge

Laureen K. Van Norman,
Judge

Ronald L. Brown,
Judge

J. Michael Fitzgerald,
Judge

John R. Hoffert,
Judge

Glenn W. Morton,
Court Administrator

Kay E. Peterson,
Clerk of the Court

Letter of Transmittal

Lincoln, Nebraska
December 1, 2001

Honorable John V. Hendry
Chief Justice of the Nebraska Supreme Court

Honorable Mike Johanns
Governor of Nebraska

Honorable Doug Kristensen
Speaker of the Nebraska Legislature

Dear Sirs:

We have the privilege of submitting herewith the Fifty-Ninth Annual Report of the Nebraska Workers' Compensation Court, prepared in accordance with the provisions and requirements of Section 48-166, Revised Statutes of Nebraska.

Very truly yours,
NEBRASKA WORKERS' COMPENSATION COURT
By

Michael K. High
Presiding Judge

Table of Contents

| Section | Title | Page |
|------------------|---|-----------|
| | Table of Contents | i |
| Section 1 | General Information | 1 |
| | History, Mission, Organization | 3 |
| | Fiscal Year Activities | 4 |
| | Organizational Chart | 6 |
| | Profiles of the NWCC Judges | 7 |
| | Compensation Court Cash Fund | 11 |
| | Workers' Compensation Statistics Fund | 12 |
| | Special Trust Funds | 13 |
| | Cumulative Totals for Trust Funds | 14 |
| | Fatal Injuries | 15 |
| | Injuries Reported | 16 |
| | Weekly Income Benefits — Maximum Rates | 17 |
| | Litigated Case Summary | 18 |
| | Hearings and Review Hearings | 19 |
| | Summary of Settlements | 20 |
| Section 2 | Legal | 21 |
| | Informal Dispute Resolution | 23 |
| Section 3 | Coverage and Claims | 25 |
| | Medical Services Activities | 27 |
| | Compliance Activities | 28 |
| | Self-Insurance Activities | 29 |
| Section 4 | Vocational Rehabilitation | 31 |
| | Certification of Counselors and Specialists | 33 |
| | Appointment of Counselors | 33 |
| | Vocational Rehabilitation Plans | 33 |

| | | |
|------------------|--|-----------|
| Section 5 | Public Information | 35 |
| | Information Line | 37 |
| | Internet Web Site | 38 |
| | Publications | 38 |
| | Workshops and Seminars | 38 |
| | Data Processing | 38 |
| Section 6 | Information Technology | 39 |
| | Accomplishments | 41 |
| | Electronic Data Interchange Initiative | 41 |
| Section 7 | Nebraska Occupational Injury and Illness Survey | 43 |
| | Occupational Safety and Health Act..... | 45 |
| | Occupational Injury and Illness Survey | 45 |

Nebraska Workers' Compensation Court General Information

Fiscal Year 2001



Nebraska Workers' Compensation Court

Nebraska Workers' Compensation Court

History

The Nebraska Workers' Compensation Act was first passed in 1913 and from then until 1917 the Act was administered by the several state district courts. In 1917, the Legislature created the Compensation Division in the Department of Labor and the commissioner of labor was designated compensation commissioner. The 1935 Legislature established the Workers' Compensation Court and transferred Compensation Division functions to the court. The authority and responsibilities of the court are found in Chapter 48, Article 1, of the Revised Statutes of Nebraska. By 1988, the workers' compensation bench had grown to seven judges who hear disputed cases throughout the state.

Mission

The mission of the Nebraska Workers' Compensation Court is to administer and enforce all provisions of the Nebraska Workers' Compensation Act, except those provisions which are committed to the courts of appellate jurisdiction.

Organization

The Nebraska Workers' Compensation Court is composed of seven judges who are initially appointed by the governor and who then remain on the bench for successive six-year terms upon approval of the electorate. Every two years, one of the judges is elected as presiding judge by the judges of the court. The presiding judge is responsible for the overall functioning of the court. Four judges are located in the State Capitol in Lincoln (temporarily relocated during Capitol restoration) and three judges are located in the Hall of Justice in Omaha. A judge will travel to any county in the state where an accident occurred to hear a disputed case. A case is first heard by a single judge and, if appealed, the case is then heard by a review panel of three judges of the court. The review is based on the record created at the original hearing, and no new evidence may be introduced. The next level of appeal is to the Nebraska Court of Appeals and ultimately a case may go to the Nebraska Supreme Court.

The court staff is organized into seven operating sections with the court administrator holding overall administrative responsibility.

The *Adjudication Section* receives court filings, docket cases, schedules hearings and motions, corresponds with the parties, and issues opinions of the court.

The *Administration Section* is responsible for the business, financial, and personnel functions of the court, and also administers the Workers' Compensation Trust Fund. Under two federal grants the section conducts a federal survey of work-related injuries and illnesses and a data collection program for fatal injuries.

The *Legal Section* reviews settlement applications for adequacy and compliance with the law, conducts mediation conferences to facilitate informal resolution of workers' compensation disputes, informs injured workers, employers, and others of their rights and obligations under the law, provides legal advice to court staff, and monitors legislation for potential impact on the workers' compensation system.

The *Coverage and Claims Section* has responsibilities in three distinct areas. Compliance activities include enforcing insurance coverage requirements and enforcing the claims handling and reporting obligations of insurers and self insurers. Medical services activities include certifying and monitoring managed care plans, administering the independent medical examiner program, revising and maintaining the schedule of medical and hospital fees, and responding to inquiries related to medical issues. Self-insurance activities include reviewing applications for

self-insurance, monitoring the financial status of self-insured employers, and collecting fees and assessments from self-insured employers.

The *Vocational Rehabilitation Section* is responsible for reviewing and approving proposed vocational rehabilitation plans, certifying vocational rehabilitation counselors and job placement specialists, and appointing a vocational rehabilitation counselor if the parties cannot agree on the selection. The progress of injured workers in an approved plan is monitored, and all payments from the Workers' Compensation Trust Fund for plan expenses must be approved by the section.

The *Public Information Section* receives and processes all reports of injury and benefit payments, whether filed electronically or in paper format, and responds to requests for records and information. The section also maintains a toll-free information line, prepares court publications, develops educational workshops, and maintains the court's Web site.

The *Information Technology Section* is responsible for the computer network, programs, and databases of the court. The section develops and maintains the court's client/server system, develops computer programs and applications, coordinates information technology activities with vendors and other state agencies, and assists other court sections in meeting their goals through the use of technology.

Activities in Fiscal Year 2001

The court pursued several ongoing initiatives in FY 2001, including electronic filing of reports and other documents with the court.

Effective July 1, 2000, all first reports of injury submitted by or on behalf of an insurer, self insured employer, or risk management pool must be filed electronically in the form and manner prescribed by the court. Exceptions are made for those entities that submit a very small number of first reports in Nebraska. At the time of publication, approximately 99 percent of all first reports of injury were being filed electronically.

Beginning no later than July 1, 2002, all compensation payment and expense reports (subsequent reports) submitted by or on behalf of an insurer, self insured employer, or risk management pool must also be filed electronically in the form and manner prescribed by the court. As an interim step, the court adopted a rule change effective July 1, 2001 to bring paper subsequent report filings in line with electronic standards that will go into effect July 1, 2002. This will allow sufficient time for insurers, self insured employers, risk management pools, and their agents to prepare for mandatory electronic filings on July 1, 2002.

Court requirements for both first and subsequent reports are consistent with national standards for electronic reporting of workers' compensation information. Electronic filings consistent with national standards will have a significant impact on the ability of the court to monitor the performance of the workers' compensation system in Nebraska and compare it to other systems nationwide. Additional benefits include increased accuracy of the data and increased operational efficiency for both the court and filing entities.

Also related to electronic filings, the court has continued to develop internal systems and processes to prepare for future electronic filing of pleadings and other litigation documents. An electronic version of the court's docket book was implemented effective October 18, 2001, and all entries for cases filed on or after that date are being made electronically rather than in paper docket books. Plans are also in place for converting the court's paper case files to electronic format, which will allow the judges, court staff, and others to access the files much more quickly and conveniently. These changes also will put the court in position to accept electronic filings of litigation documents when such filings are otherwise permitted. While no firm implementation date has been set, electronic filings could begin as early as 2003.

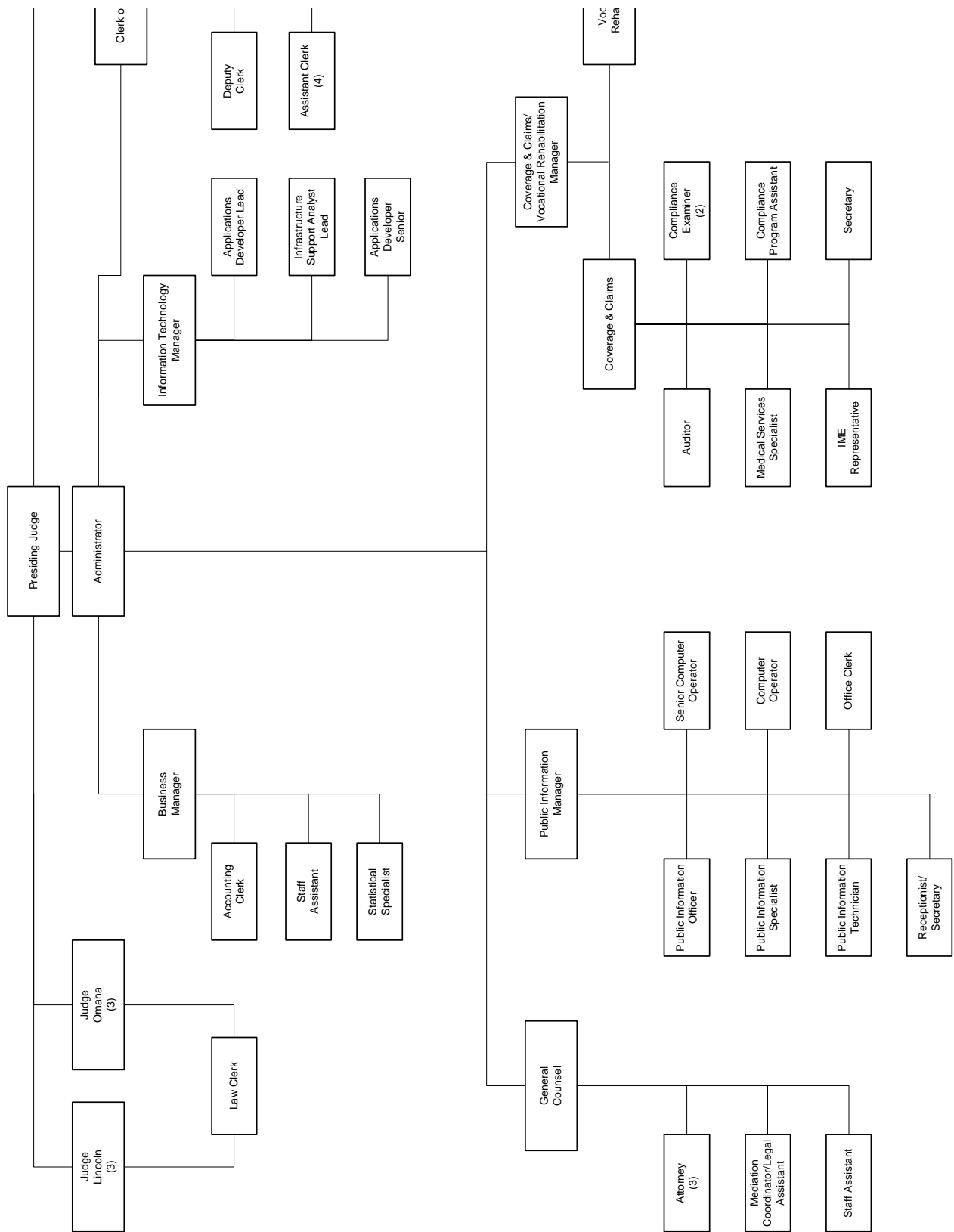
As a result of LB1221 from the 2000 session of the Nebraska Legislature, the court amended its Rules of Procedure to reflect the merger the Second Injury Fund and the Vocational Rehabilitation Fund into a new Workers' Compensation Trust Fund (effective July 1, 2000). Substantive requirements for second injury and vocational rehabilitation benefits remain the same, but payments for both benefit types are now made from the Workers Compensation Trust Fund. The court continued to expand its Web site in FY 2001, and total visits increased approximately 300 percent to 83,272. Many requests for public records are now being processed electronically.

Restoration at the State Capitol required temporary relocation of the court's Capitol offices to the Old Federal Building, 129 North 10th Street in Lincoln. Current plans are for the court to return to the Capitol in the early months of 2002. However, until further notice all Lincoln hearings will continue to be held 129 North 10th Street, and all "in person" filings of pleadings and other litigation related documents will be made at that location as well. All court mail, including litigation filings made by mail, shall continue to be sent to the court's mailing address (P.O. Box 98908, Lincoln, NE 68509-8908), which has not changed. All office phone numbers also remain the same. Court staff located at the 525 Building (525 South 13th Street in Lincoln) have remained at that location.

In addition to the specific activities listed above for FY 2001, the court continues to perform other duties on a regular basis as noted above in the "Organization" section.

The activities of the court in FY 2001 are described in greater detail in the following pages of this Annual Report, together with basic statistics regarding injuries reported in FY2001. Additional injury statistics and statistics regarding benefit payments reported during calendar year 2001 will be included a separate statistical supplement to be published in the Summer of 2002.

NEBRASKA WORKERS' COMPENSATION COURT



Compensation Court Cash Fund

Fiscal Year 2001 (July 1, 2000 to June 30, 2001)

The Compensation Court Cash Fund was established in 1993 and the first assessment was deposited into the fund in 1994. The fund was created as part of reform legislation in 1993 and replaced the use of general funds. The Compensation Court Cash Fund provides for the expense of administering the Nebraska Workers' Compensation Act and for the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court. The fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. Contributions to the fund abate for one year whenever the balance of the fund equals or exceeds three times the amount expended and encumbered in the fiscal year just ending. The Nebraska Legislature appropriates a specific sum each year for operations of the Nebraska Workers' Compensation Court, to be funded from the Compensation Court Cash Fund. The appropriation for fiscal year 2001 was \$3,668,507.

BALANCE of fund on July 01, 2000: \$7,682,885

Revenue:

| | |
|-------------------|-----------|
| Assessments | 3,159,732 |
| Customer Deposits | (70) |
| Interest | 441,303 |
| Miscellaneous | 102,039 |

Total Revenue: 3,703,004

Balance of fund before expenditures 11,385,889

Expenditures:

| | Appropriation | Not Expended | Actual Expended |
|-----------------------|------------------|-----------------|--------------------|
| Court Admin. | 3,258,013 | 424,099 | 2,833,914 |
| Voc. Rehab. Admin. | 291,903 | 26,193 | 265,710 |
| Second Injury Admin. | 9,496 | 2,288 | 7,208 |
| Self-Insurance Admin. | 79,877 | 16,766 | 63,111 |
| Federal Grant Admin. | 29,218 | 5,211 | 24,007 |
| Totals | <u>3,668,507</u> | <u>474,557*</u> | <u>3,193,950</u> |

Less Total Expenditures 3,193,950

BALANCE of fund on June 30, 2001: \$8,191,939

*\$90,247 was encumbered for FY 2001 expenditures that were named, but not paid, prior to June 30, 2001.

Workers' Compensation Statistics Fund

Fiscal Year 2001 (July 1, 2000 to June 30, 2001)

The court conducts a survey of work-related injuries and illnesses and a data collection program for fatal injuries pursuant to two grants from the U.S. Department of Labor—Bureau of Labor Statistics (BLS). The Survey of Occupational Injuries and Illnesses is mandated by the Occupational Safety and Health Act of 1970 (P.L. 91-596), and the court was designated as the agency in Nebraska to conduct this work in a letter of March 25, 1971 from Governor J.J. Exon to Secretary of Labor, J.D. Hodgson. In 1991, the court contracted for the additional responsibilities of conducting the Census of Fatal Occupational Injuries as designated by BLS.

Expenses for administering these two federal grants are split 50/50 between the State of Nebraska and BLS. The state share of expenditures is charged against the Compensation Court Cash Fund, and the federal share is charged against the Workers' Compensation Statistics Fund. Federal monies are requested on a monthly basis, dependent upon estimated expenditures for that month, and deposited into the Workers' Compensation Statistics Fund. The Nebraska Legislature appropriates a specific sum each year for expenditures from the Workers' Compensation Statistics Fund. The appropriation for fiscal year 2001 was \$23,901.

BALANCE of fund on July 01, 2000: \$139

Revenue:

| | | |
|----------------------------|--------|--|
| Intergovernmental Transfer | 23,857 | |
|----------------------------|--------|--|

| | | |
|----------------|--|--------|
| Total Revenue: | | 23,857 |
|----------------|--|--------|

| | | |
|-------------------------------------|--|--------|
| Balance of fund before expenditures | | 23,996 |
|-------------------------------------|--|--------|

Expenditures:

| | Appropriation | Not Expended | Actual Expended |
|----------------------|---------------|-----------------|--------------------|
| Federal Grant Admin. | 23,901 | 0 | 23,901 |
| Totals | 23,901 | 0 | 23,901 |

| | | |
|-------------------------|--|--------|
| Less Total Expenditures | | 23,901 |
|-------------------------|--|--------|

| | | |
|-----------------------------------|--|------|
| BALANCE of fund on June 30, 2001: | | \$95 |
|-----------------------------------|--|------|

Trust Funds

Fiscal Year 2001 (July 1, 2000 to June 30, 2001)

The *Workers' Compensation Trust Fund* was established July 1, 2000 as part of LB 1221 from the 2000 session of the Nebraska Legislature. The purpose of the fund is to make second injury benefit payments in accordance with section 48-128 and vocational rehabilitation benefit payments in accordance with section 48-162.01, and for paying administrative expenses relating to the fund. The fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. Assessments are made whenever the fund is projected to go below the statutory minimum level.

The *Second Injury Fund* was established in 1913 to encourage employers to hire employees with disabilities. Pursuant to section 48-128, employers could be relieved of liability for disability benefits resulting from an increased amount of disability due to the combination of a preexisting disability and a subsequent work-related injury. Instead, the additional disability was compensated out of the Second Injury Fund.

In 1997 the Nebraska Legislature passed LB 854 which eliminated these provisions for injuries occurring on or after December 1, 1997. The fund remained available for subsequent injuries occurring before that date. Effective July 1, 2000, the Second Injury Fund was eliminated with the creation of the Workers' Compensation Trust Fund. While the substantive requirements for second injury benefits remain the same, second injury benefit payments for injuries occurring before December 1, 1997 are now made from the Workers' Compensation Trust Fund.

The *Vocational Rehabilitation Trust Fund* was established in 1974 to provide assistance to injured workers eligible for retraining or job placement services. Pursuant to section 48-162.01, payments for tuition, room and board, transportation, books, supplies, and related costs were paid from the Vocational Rehabilitation Trust Fund, when a vocational rehabilitation plan had been approved by the court staff.

Effective July 1, 2000, the Vocational Rehabilitation Fund was eliminated with the creation of the Workers' Compensation Trust Fund. While the substantive requirements for vocational rehabilitation benefits remain the same, vocational rehabilitation training costs are now paid from the Workers' Compensation Trust Fund. The employer continues to pay temporary indemnity benefits during the course of a vocational rehabilitation plan, as well as expenses related to the development and implementation of the plan.

| | Balance July 1, 2000 | Interest/ Reimbursement/ Assessments | Total Assets | Benefit Costs | Admin. Costs | Balance June 30, 2001 |
|----------------------|-------------------------|--|-----------------|------------------|-----------------|--------------------------|
| Workers' Comp. Trust | \$6,200,931 | \$353,796 | \$6,581,732 | \$1,276,160 | \$0* | \$5,305,572 |
| Fund | | \$40 | | | | |
| | | \$26,965 | | | | |

*Administrative costs were not transferred from the Workers' Compensation Trust Fund to the Compensation Court Cash Fund in FY 2001. Administrative costs for Workers' Compensation Trust Fund activities for FY 2001 totaled \$272,918, and were paid from the Compensation Court Cash Fund.

Cumulative Totals For Trust Funds

Disbursements (Benefit & Administrative Costs) Made From Trust Funds

| Date | Second Injury Trust Fund | Vocational Rehabilitation Fund | Workers' Compensation Trust Fund |
|---------------------|--------------------------|--------------------------------|----------------------------------|
| June 30, 2001 | N/A | N/A | \$1,276,160* |
| June 30, 2000 | \$899,085* | \$1,022,765 | N/A |
| June 30, 1999 | \$833,256 | \$1,156,770 | N/A |
| June 30, 1998 | \$564,840 | \$1,022,226 | N/A |
| June 30, 1997 | \$492,644 | \$918,303 | N/A |
| June 30, 1996 | \$564,743 | \$761,656 | N/A |
| June 30, 1995 | \$555,371 | \$825,792 | N/A |
| June 30, 1994 | \$566,964 | \$1,011,033 | N/A |
| June 30, 1993 | \$482,810 | \$927,870 | N/A |
| June 30, 1992 | \$385,149 | \$1,002,108 | N/A |

Assessments Made for Trust Funds

| Date | Second Injury Trust Fund | Vocational Rehabilitation Fund | Workers' Compensation Trust Fund |
|---------------------|--------------------------|--------------------------------|----------------------------------|
| June 30, 2001 | N/A | N/A | \$26,965** |
| June 30, 2000 | \$4,124,826 | \$0 | N/A |
| June 30, 1999 | \$0 | (\$573)** | N/A |
| June 30, 1998 | \$0 | \$3,639,445 | N/A |
| June 30, 1997 | \$0 | \$0 | N/A |
| June 30, 1996 | \$0 | \$0 | N/A |
| June 30, 1995 | \$0 | \$0 | N/A |
| June 30, 1994 | \$0 | \$34,175** | N/A |
| June 30, 1993 | \$3,100,936 | \$3,096,436 | N/A |
| June 30, 1992 | \$0 | \$15,387** | N/A |

* Administrative costs were not transferred from these funds to the Compensation Court Cash Fund for the years noted, and as a result are not included in these figures. Administrative costs for Workers' Compensation Trust Fund activities for the year ending June 30, 2001 totaled \$272,918. Administrative costs for Second Injury Fund activities for the year ending June 30, 2000 totaled \$11,194. These costs were paid from the Compensation Court Cash Fund.

** Adjustment by the Department of Insurance on assessments paid in prior fiscal years.

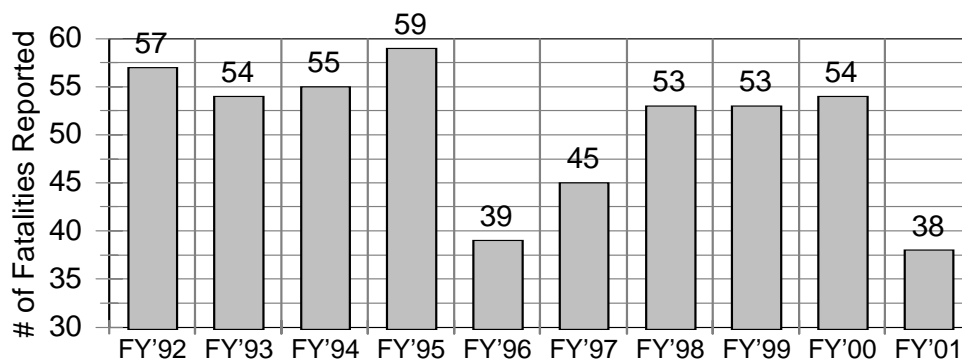
Fatal Injuries*

| | Male | Female | Total |
|-------------------------------------|------|--------|-------|
| July 1, 2000 to June 30, 2001 | 38 | 0 | 38 |
| July 1, 1999 to June 30, 2000 | 49 | 5 | 54 |
| July 1, 1998 to June 30, 1999 | 48 | 5 | 53 |
| July 1, 1997 to June 30, 1998 | 49 | 4 | 53 |
| July 1, 1996 to June 30, 1997 | 41 | 4 | 45 |
| July 1, 1995 to June 30, 1996 | 38 | 1 | 39 |
| July 1, 1994 to June 30, 1995 | 56 | 3 | 59 |
| July 1, 1993 to June 30, 1994 | 46 | 9 | 55 |
| July 1, 1992 to June 30, 1993 | 48 | 6 | 54 |
| July 1, 1991 to June 30, 1992 | 52 | 5 | 57 |

*Includes deaths resulting from occupational disease.

Fatalities

July 1, 1991 to June 30, 2001



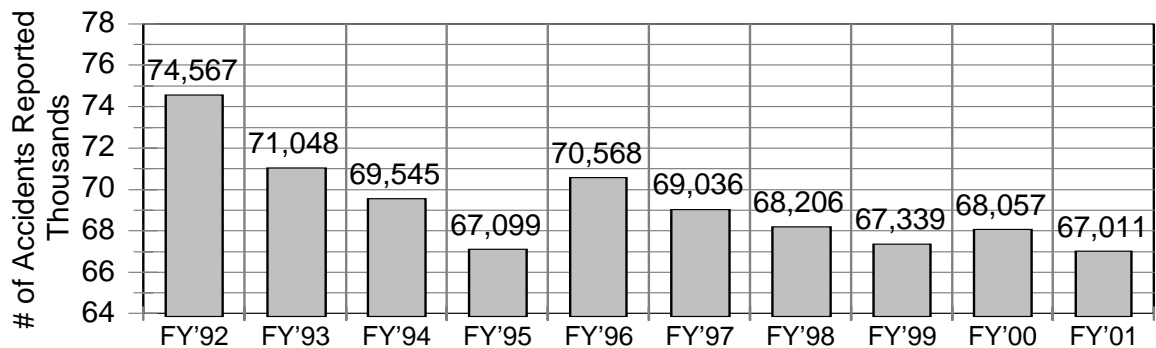
Injuries Reported*

| | Male | Female | Unknown | Total |
|-------------------------------------|--------------|--------------|-------------|--------|
| July 1, 2000 to June 30, 2001 | 39,238 | 24,100 | 3,673 | 67,011 |
| July 1, 1999 to June 30, 2000 | 41,249 | 24,544 | 2,264 | 68,057 |
| July 1, 1998 to June 30, 1999 | 41,126 | 24,734 | 1,479 | 67,339 |
| July 1, 1997 to June 30, 1998 | 43,217 | 24,549 | 440 | 68,206 |
| July 1, 1996 to June 30, 1997 | 44,059 | 24,971 | 6 | 69,036 |
| July 1, 1995 to June 30, 1996 | 45,549 | 25,019 | 0 | 70,568 |
| July 1, 1994 to June 30, 1995 | 43,667 | 23,424 | 8 | 67,099 |
| July 1, 1993 to June 30, 1994 | 45,574 | 23,971 | 0 | 69,545 |
| July 1, 1992 to June 30, 1993 | 46,759 | 24,289 | 0 | 71,048 |
| July 1, 1991 to June 30, 1992 | 48,986 | 25,581 | 0 | 74,567 |

*Includes occupational disease.

Number of Reported Injuries*

July 1, 1991 to June 30, 2001



*Includes occupational disease.

Weekly Income Benefits — Maximum Rates

Under the Nebraska Workers' Compensation Act the basic rule regarding weekly income benefits for total disability is that the employee is entitled to two thirds of his or her average weekly wage, subject to maximum and minimum levels. Changes in the maximum or minimum rates apply to injuries occurring on or after the effective date, but not to injuries occurring before that date.

The maximum benefit level is set at 100 percent of the state average weekly wage, as determined by the Nebraska Workers' Compensation Court. The calculation excludes federal employees, and is made in accordance with section 48-121.02 of the Nebraska Revised Statutes. The court recently issued an order setting the maximum benefit level for calendar year 2002 at \$528. The minimum rate remains at \$49 as provided in section 48-121.01(2).

Maximum/Minimum Compensation Benefits

| Injury Occurring Between: | Maximum | Minimum |
|----------------------------|-------------|---------|
| 01/01/02 | \$528 | \$49 |
| 01/01/01 to 12/31/01 | \$508 | \$49 |
| 01/01/00 to 12/31/00 | \$487 | \$49 |
| 01/01/99 to 12/31/99 | \$468 | \$49 |
| 01/01/98 to 12/31/98 | \$444 | \$49 |
| 01/01/97 to 12/31/97 | \$427 | \$49 |
| 01/01/96 to 12/31/96 | \$409 | \$49 |
| 01/01/95 to 12/31/95 | \$350 | \$49 |
| 06/01/94 to 12/31/94 | \$310 | \$49 |
| 07/01/91 to 05/31/94 | \$265 | \$49 |
| 07/10/90 to 06/30/91 | \$255 | \$49 |
| 07/01/88 to 07/09/90 | \$245 | \$49 |

Litigated Case Summary¹

| | Original Hearing Level | | Review Hearing Level | | Supreme Court/ Court of Appeals Level | |
|---|------------------------------|--------------|----------------------------|------------|---|-----------|
| Fiscal Year ² | 2001 | *2000 | 2001 | *2000 | 2001 | 2000 |
| Cases Pending at beginning of Fiscal year | 1,560 | 1,195 | 64 | 60 | 44 | 31 |
| Petition or Appeal filed in Fiscal Year | 1,375 | 1,410 | 133 | 124 | 45 | 54 |
| Reopened | 102 | 123 | N/A | N/A | N/A | N/A |
| Total | 3,037 | 2,728 | 197 | 184 | 89 | 85 |
| Court Disposition | | | | | | |
| Decisions Issued | 424 | 340 | 92 | 92 | 48 | 34 |
| Settlements | 811 | 596 | 23 | 14 | 2 | 0 |
| Other Dispositions ³ | 310 | 232 | 11 | 14 | 3 | 7 |
| Total Dispositions | 1,545 | 1,168 | 126 | 120 | 53 | 41 |
| Total Pending | 1,492 | 1,560 | 71 | 64 | 36 | 44 |

¹ Cases may appear more than once in any year if they are appealed.

² Fiscal Years run from July 1 through June 30.

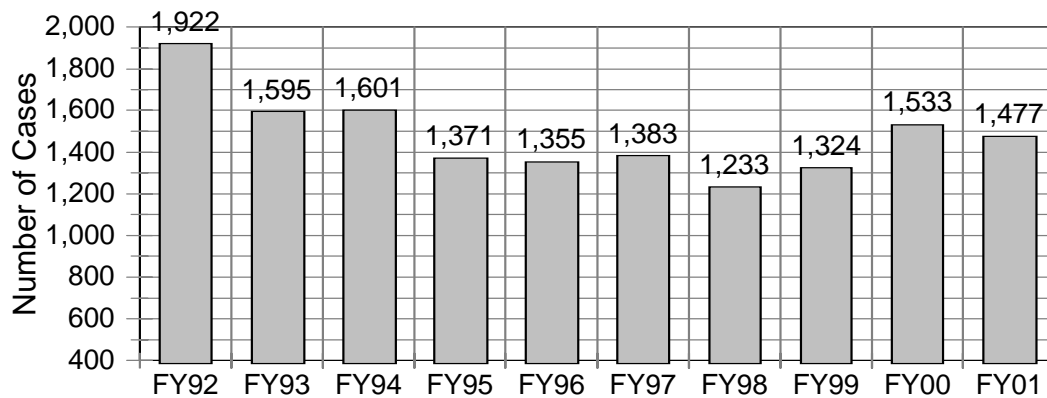
³ Dismissals without hearings.

| Fiscal Year | 2001 | *2000 | 1999 |
|-------------------------------|-------|-------|-------|
| Number of Motions Filed | 2,150 | 1,630 | 1,569 |
| Number of Motion Dispositions | 1,915 | 1,377 | 1,355 |
| Number of Motion Hearings | 910 | 842 | 589 |

*Numbers adjusted as a result of corrections to data.

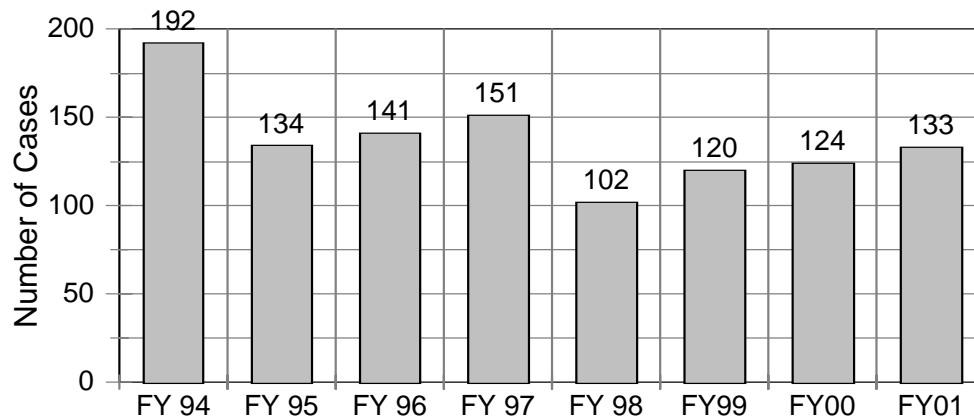
Original Hearing Level

Petitions Filed Or Reopened During Fiscal Year



Review Hearing Level*

Applications For Review Filed During Fiscal Year



*Prior to fiscal year 1994 rehearings or a combination of rehearings and review hearings were held.

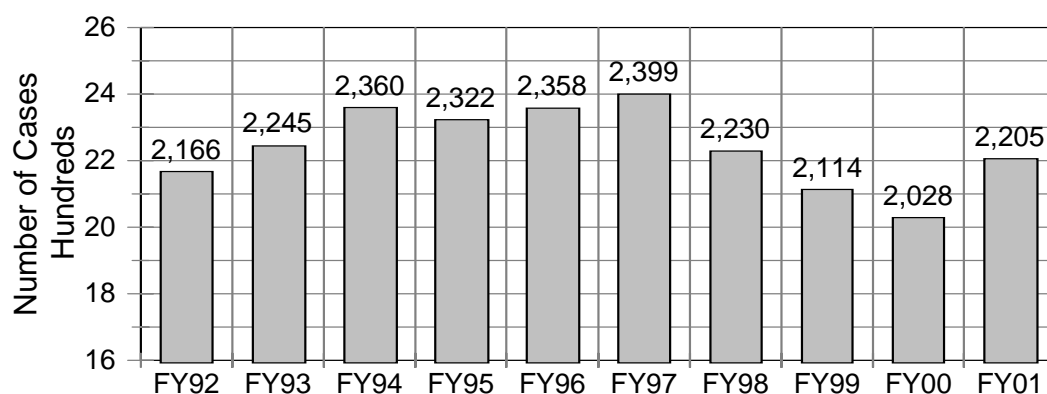
Summary of Settlements

| Fiscal Year ¹ | 2001 | 2000 | 1999 | 1998 | 1997 |
|--|--------------|--------------|--------------|--------------|--------------|
| Applications | | | | | |
| Applications Pending at Beginning of Fiscal Year | 159 | *99 | *197 | 149 | 46 |
| Applications Made in Fiscal Year | 2,205 | 2,028 | 2,114 | 2,230 | 2,399 |
| Total | 2,364 | 2,127 | 2,311 | 2,379 | 2,445 |
| Dispositions | | | | | |
| Applications Approved Without Litigation | 1,366 | *1,321 | 1,615 | 1,457 | *1,645 |
| Applications Approved at the Original Hearing Level | 811 | *596 | 531 | 713 | 620 |
| Applications Approved at Review Hearing Level | 23 | 14 | 12 | 8 | 28 |
| Applications Approved at the Sup. Crt./Crt. App. Level | 2 | 0 | 4 | 0 | 3 |
| Applications — Total Approved | 2,202 | 1,931 | 2,162 | N/A | N/A |
| Applications — Total Disapproved | 26 | 37 | 48 | N/A | N/A |
| Total | 2,228 | 1,968 | 2,210 | 2,178 | 2,296 |
| Applications Pending at End of Fiscal Year | 136 | 159 | 101 | 201 | 149 |

¹Fiscal years run from July 1 through June 30.

*Numbers adjusted as a result of corrections to data.

Settlement Applications in Fiscal Year



Nebraska Workers' Compensation Court

Legal Section

Fiscal Year 2001



Legal

The Legal section of the Nebraska Workers' Compensation Court is responsible for reviewing lump sum settlements, facilitating informal dispute resolution, responding to inquiries from the public, providing legal advice to the court's administrative staff, and monitoring legislation for potential impact on the workers' compensation system. The section includes the court's general counsel, three staff attorneys, a mediation coordinator/legal assistant, and a legal secretary.

Statistics for lump sum settlements processed in fiscal year 2001 (July 1, 2000 through June 30, 2001) can be found in section 1, page 20 of this annual report. Summaries of the Nebraska Supreme Court and Court of Appeals decisions may be found on the Publications/Forms page of the court's web site (<http://www.nol.org/workcomp/pubs.htm>).

Informal Dispute Resolution

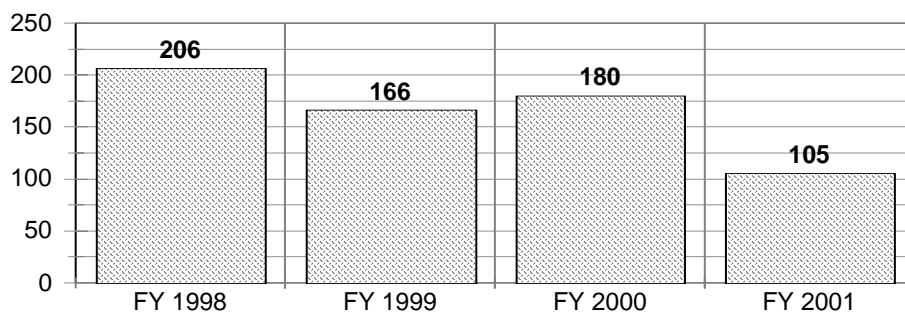
Informal Dispute Resolution (IDR) is available to anyone with an interest in a workers' compensation dispute. The process is voluntary and the guidelines for IDR are found in Rule 48. It provides a dispute resolution mechanism for health care providers, vocational rehabilitation counselors, and others who would otherwise have no standing before the court. Attorneys may participate, but parties to the dispute do not have to be represented. The court may also order IDR and, in fact, disputes involving a change in the treating physician must be submitted for IDR before a motion or petition can be filed. IDR is attempted in all litigated cases in which a party is unrepresented.

The court's IDR process focuses on interest-based mediation. This means that one of the court's professionally trained mediators assists the parties in reaching a resolution of the dispute that satisfies the underlying interests of the parties. The mediator does not make decisions nor evaluate the case on behalf of either party. Mediation can be an empowering process because it assumes that the participants can decide what is best for themselves rather than a mediator or a judge. Many IDR inquiries can be resolved without the need for a mediation conference simply through information and education provided by the mediation coordinator.

The court currently has four attorney-mediators on staff. All of the mediators and the mediation coordinator are trained in the basic skills of mediation through a nationally recognized 30-hour training program through the Office of Dispute Resolution in Lincoln, NE. Advancement of mediation skills is encouraged, and as opportunities arise the mediators receive additional training.

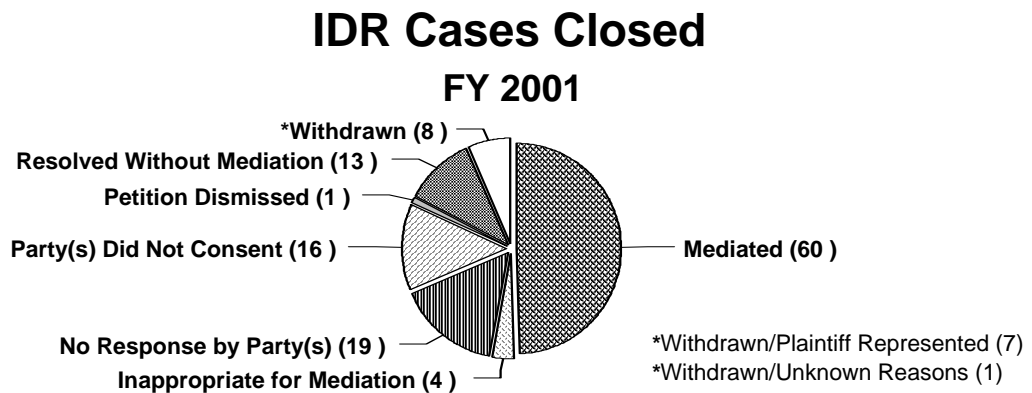
IDR Cases Opened

Requests By Year



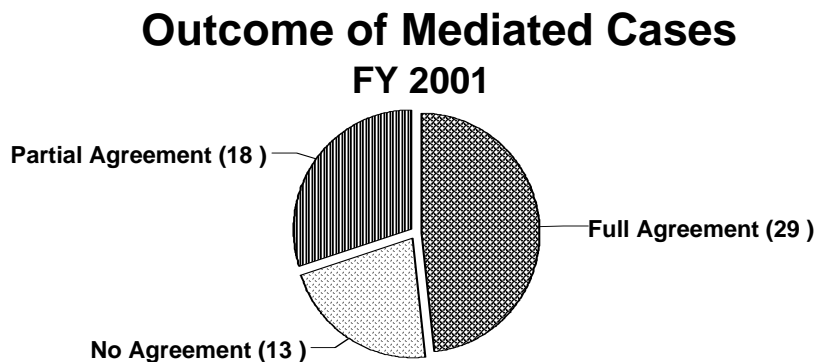
Closed Cases

The mediation coordinator evaluates all requests to determine whether the issues are appropriate for IDR under workers' compensation laws and rules. Sometimes they are not. In FY 2001, the court chose not to accept four cases which were inappropriate for mediation. In 13 of the 121 cases closed in FY 2001, parties came to an agreement while still in the intake process with communication facilitated by the mediation coordinator. Mediation through the court is voluntary; in 35 cases, or 29 percent of all closed cases, one party declined to participate or did not respond to the request. Cases may be closed for a variety of other reasons as shown in the following chart.



Mediated Cases

Of the 121 cases closed in FY 2001, 60 met in a mediation conference either in person or over the telephone. Of those 60 cases, 78 percent reached full or partial agreement.



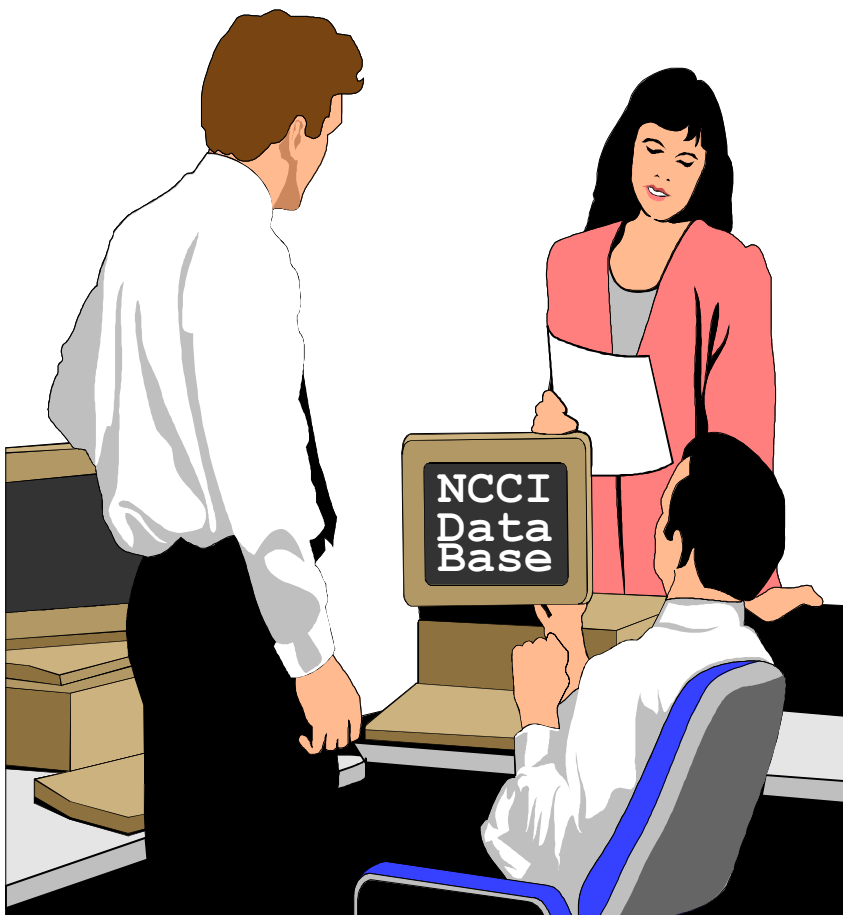
IDR Evaluation Statistics

The parties who have used mediation for their disputes continue to give high marks to the mediators and the mediation process. A total of 42 people completed a post-mediation evaluation in fiscal year 2001. Of these:

- 73 percent “Agree” or “Strongly Agree” that they were satisfied with mediation;
- 77 percent “Agree” or “Strongly Agree” that they would rather resolve disputes like the one mediated through mediation instead of going to court;
- 85 percent “Agree” or “Strongly Agree” that the mediation process was fair;
- 88 percent “Agree” or “Strongly Agree” that the issues important to them were identified and discussed in the mediation process.

Nebraska Workers' Compensation Court Coverage and Claims Section

Fiscal Year 2001



Coverage and Claims

This section includes a manager, an independent medical examiner representative, a medical services specialist, two compliance examiners, a workers' compensation auditor, a program assistant, and a secretary. Section responsibilities are divided into three categories: medical services; compliance; and self-insurance.

Medical Services Activities

Section staff respond to inquiries from a variety of sources concerning the application and use of the court's Schedule of Medical and Hospital Fees, managed care, the Independent Medical Examiner program, the choice of physician rule, and other questions relating to medical, surgical, and hospital services under the Nebraska Workers' Compensation Act.

Fee Schedule

Section 48-120 of the Act requires the court to review the Schedule of Medical and Hospital Fees at least biennially and make appropriate changes when necessary. The Schedule was last revised in FY 2000 and was effective for all payments made on and after June 15, 2000. No changes were made during fiscal year 2001.

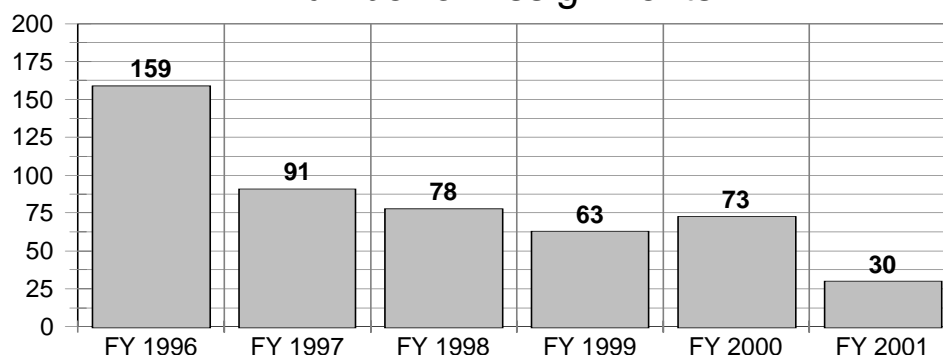
Independent Medical Examiner (IME) System

Once a dispute arises regarding the medical condition of the employee or related issues, either side may request a finding by an independent medical examiner. The IME system was designed to give the parties an additional means of resolving disputes outside the judicial process.

To serve as an Independent Medical Examiner for the court, physicians must complete an application and be approved by the judges of the court. During FY 2001, the section contacted all approved doctors and updated application information and documented willingness to remain on the list of examiners for the court. As a result of this mass mailing, there are now 240 physicians on the court's list of Independent Medical Examiners.

The number of requests for assignment of an IME as well as the number of actual assignments continued to decline during FY 2001. In fact, the section handled only 48 requests and made 30 assignments during this last year. The majority of those continue to come from employees' attorneys. The graph below shows assignments since the system began in 1996.

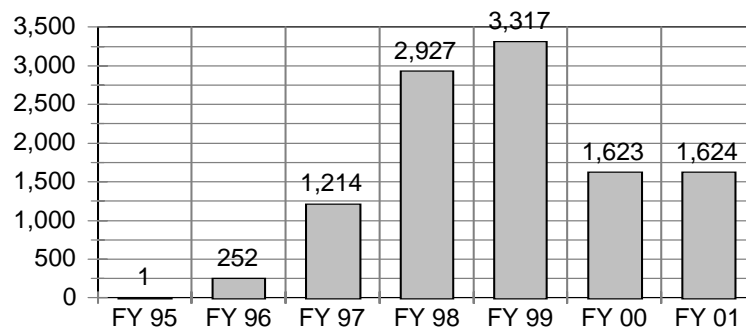
Independent Medical Examiners
Number of Assignments



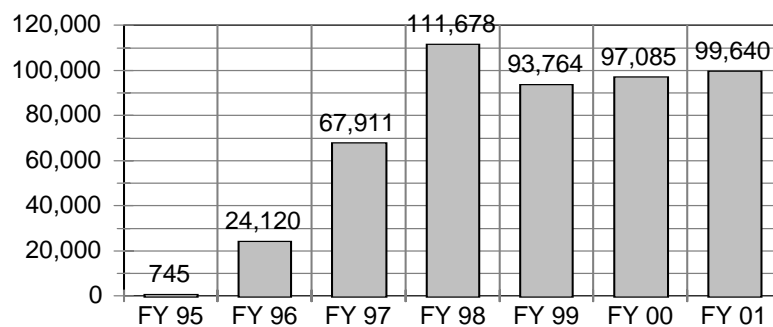
Managed Care Plans for Workers' Compensation

A table showing current information about managed care plans certified for workers' compensation is available on the court's website (<http://www.nol.org/workcomp/>) under the Listings tab. No new applications were submitted during FY 2001. On June 30, 2001 there were 1,624 employers and 99,640 employees covered by the certified managed care plans on June 30, 2001. Bar graphs showing the trend in covered employers and employees follow.

Number of Employers Covered



Number of Employees Covered



Compliance Activities

One of the primary enforcement activities of the section is to identify employers who do not have insurance coverage as required under the Nebraska Workers' Compensation Act. Compliance examiners first attempt to bring the uninsured employer into compliance; however, if the efforts of the staff do not result in compliance the case is referred to the Attorney General's office for further action.

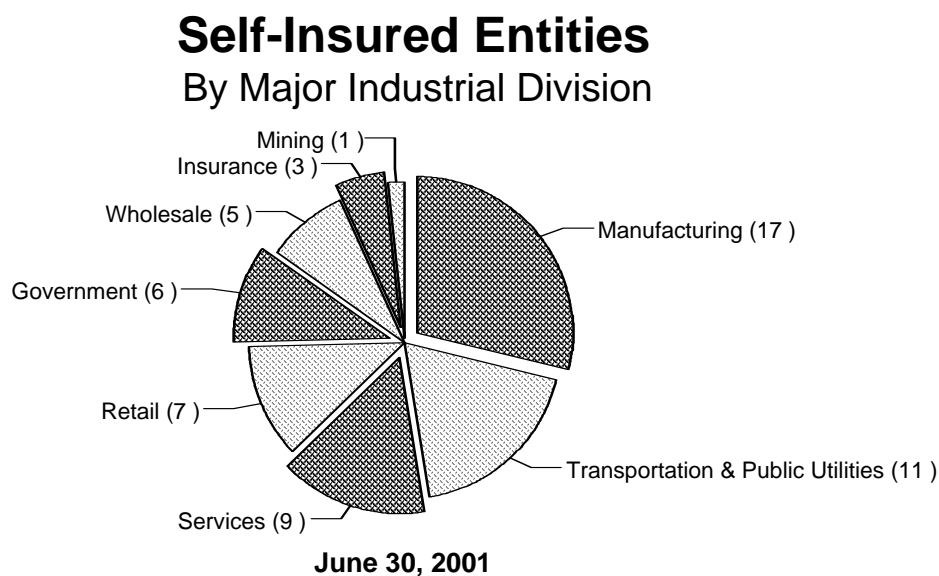
Insurance carriers, risk management pools, and self-insured employers are also required to comply with obligations under the Act, including the obligation to report injuries and payments in accordance with the Act and the Court's Rules of Procedure. Coverage and Claims staff enforce those reporting requirements, requesting missing injury reports and monitoring for their receipt, clarifying discrepancies on existing reports and obtaining missing information. Proper reporting of compensation payments is equally as important as proper reporting of injuries. Section staff review all final awards and court approved settlements for receipt of accurate and timely payment reports. Missing reports are requested and reports with errors are returned for correction of the payment or the report.

Compliance examiners respond to a large volume of phone inquiries from a variety of sources. While many questions can be quickly answered, a great number of calls are logged because follow up action is needed or anticipated. Issues frequently addressed include: insurance carrier identification and contact information; benefit calculation questions; payment explanation; delay in receiving benefits; and general rights and obligations questions. Often, callers identify situations where employers are uninsured, injury reports are not being filed, and insurers, employers, or risk management pools are not complying with other obligations under the Act. Staff investigate the specific cases, encourage voluntary compliance, and take appropriate legal action when necessary. They work with responsible parties to correct behavior and educate them about their obligations to ensure continuing compliance. Compliance personnel made over 5,000 contacts in FY 2001 requiring various levels of service.

Self-Insurance Activities

The Coverage and Claims section is responsible for reviewing applications for individual self-insurance, determining and collecting fees and assessments, and monitoring those employers who have been granted the privilege of self-insurance for continued ability to meet their financial obligations under the Nebraska Workers' Compensation Act. Self-insurance privileges are subject to annual review and renewal. Renewal applications include payment of an administrative fee to cover the cost of reviewing applications and supervising and administering the self-insurance program.

At the beginning of each calendar year, the court calculates and collects from employers self-insured for the prior calendar year necessary assessments for the state's General Fund, the Compensation Court Cash Fund, and the Workers' Compensation Trust Fund. The assessments are based on the number and classification of employees, payroll, and benefits paid during the previous calendar year. Because much of the information about self-insurers in Nebraska is kept on a calendar year basis, the statistics reported do not always coincide with the end of the court's fiscal year. It is important to note this distinction in the graphics that follow. As of June 30, 2001 there were 59 employers approved for self-insurance. For calendar year 2001 tax and assessment purposes, there were 62 self-insurers (employers who were self-insured for all or part of calendar year 2000). The State of Nebraska is self-insured by statute and is not included in any of the statistics that follow.



Self-Insurance Status

| Calendar Year | # of Self-Insurers | # of Employees | Gross Payroll |
|---------------|--------------------|----------------|---------------|
| 2000 | 62 | 148,113 | 3,785,487,567 |
| 1999 | 64 | 136,136 | 3,785,362,521 |
| 1998 | 68 | 130,134 | 3,908,884,324 |
| 1997 | 76 | 123,282 | 3,095,073,558 |
| 1996 | 89 | 137,640 | 3,441,007,693 |
| 1995 | 92 | 130,854 | 3,268,057,718 |
| 1994 | 85 | 122,475 | 3,044,621,915 |
| 1993 | 83 | 117,073 | 2,743,717,174 |
| 1992 | 74 | 103,970 | 2,369,261,914 |
| 1991 | 69 | 91,340 | 1,942,444,458 |

Note: The 2001 figures are not available at this time.

Nebraska Workers' Compensation Court Vocational Rehabilitation Section

Fiscal Year 2001



Vocational Rehabilitation

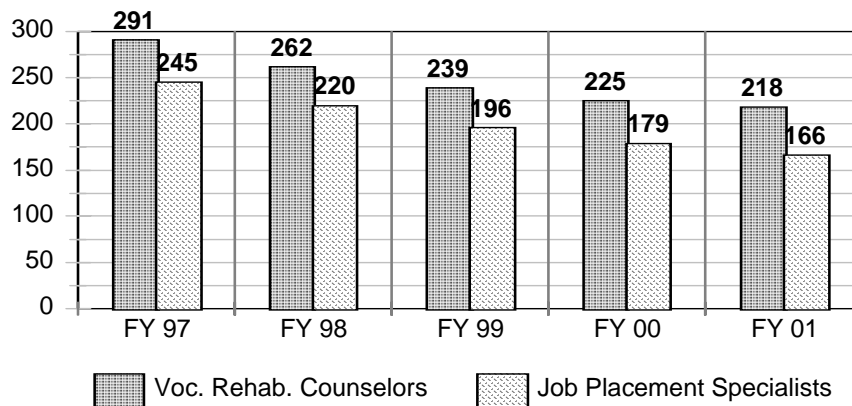
A manager, three vocational rehabilitation specialists, and two support staff are responsible for duties associated with vocational rehabilitation services to which an employee may be entitled under the Nebraska Workers' Compensation Act. The goal of vocational rehabilitation is to return an injured worker to suitable, gainful employment after an injury covered under the Act. A wide variety of services are available, from coordinating return to the pre-injury job with the employer to a period of formal retraining.

The duties of the section can be divided into three broad categories: certifying vocational rehabilitation counselors and job placement specialists; appointing counselors when parties cannot agree; and, reviewing, approving, and monitoring vocational rehabilitation plans.

Certification of Counselors and Specialists

Vocational rehabilitation services can only be provided to injured workers by individuals who have been certified by the court. Rules 39-41 contain the requirements for certification. On June 30, 2001 there were 218 vocational rehabilitation counselors and 166 job placement specialists on the directory maintained by the court. Of these, 130 counselors and 81 job placement specialists were located in Nebraska.

Certified Counselors and Specialists



Appointment of Counselors

When an injured worker claims entitlement to vocational rehabilitation services, the employee and the employer (or the employer's insurer) must try to agree on a vocational rehabilitation counselor to evaluate the employee and provide needed services. If they can't agree, one of them can ask the court to appoint a counselor from the directory. Of the 612 cases requiring a vocational rehabilitation counselor in FY 2001, the court appointed 190 from its directory and the parties were able to agree upon a counselor in the other 422 cases.

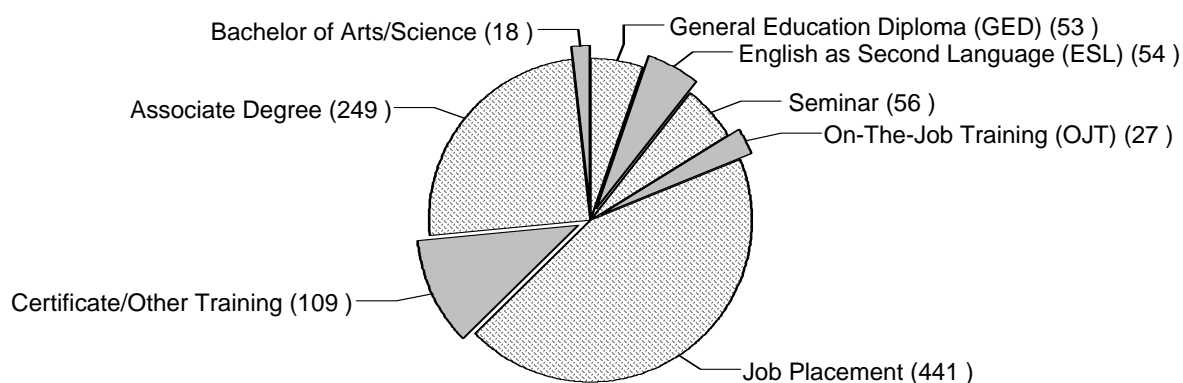
When a vocational rehabilitation counselor is agreed upon or appointed, a vocational rehabilitation case is established. On June 30, 2001 there were 1,177 open cases. A rule change in December 2000 resulted in the closing of 847 cases that were open and being monitored because of medical case management only. Because of that rule change, medical case management only cases are no longer being monitored. Over 700 cases were closed for a variety of other reasons during FY 2001.

Vocational Rehabilitation Plans

Once it is determined that an employee may be entitled to vocational rehabilitation services in order to return to suitable, gainful employment the employee is evaluated and, if necessary, a vocational rehabilitation plan is developed. The level of services to be provided is based on a hierarchy outlined in Section 48-162.01 of the Nebraska Workers' Compensation Act. These services range from coordinating a return to the pre-injury job with the pre-injury employer to a plan of formal retraining.

A vocational rehabilitation plan of some type is involved in a majority of the cases monitored by the section. The following chart shows the type of plan involved in 1,007 cases either closed during FY 2001 or currently being monitored.

Type of Vocational Plan



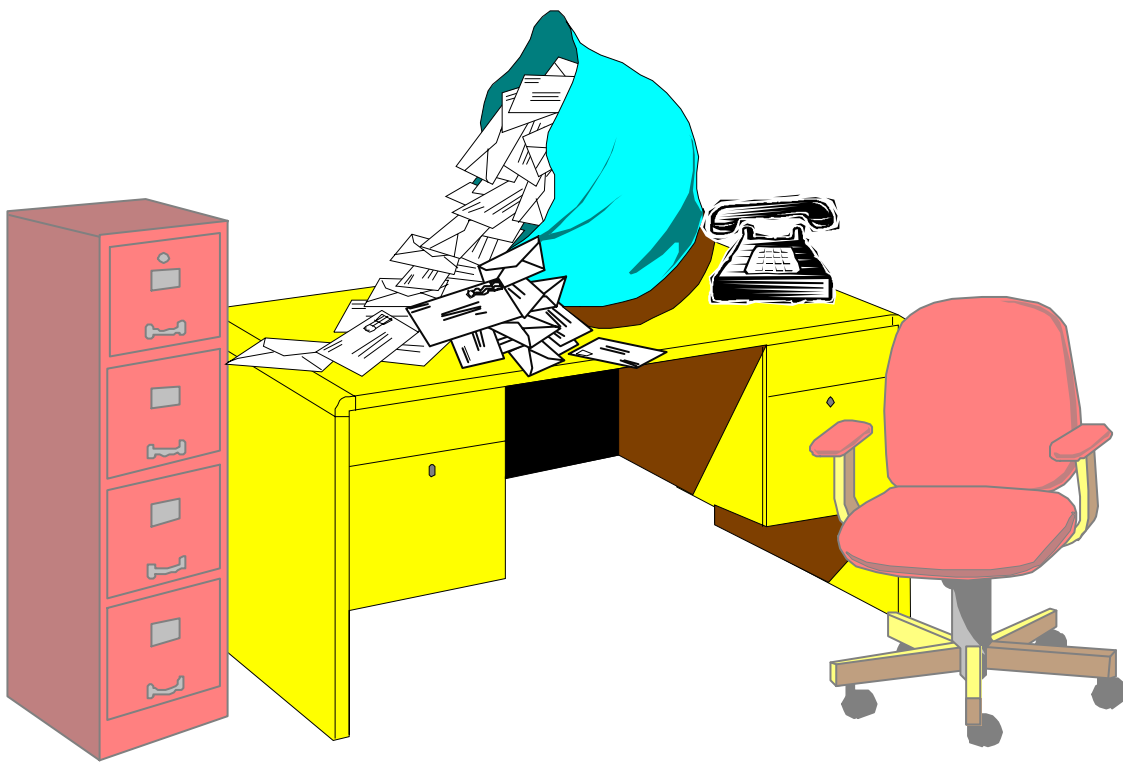
When an employee is in a court-approved vocational rehabilitation plan, the following costs are paid by the Workers' Compensation Trust Fund administered by the court: tuition; books; tools; other appropriate fees and costs; board, lodging, and/or travel in some circumstances. In addition, salaries, other benefits, and expenses incurred for the purposes of vocational rehabilitation are paid from the fund. Total disbursements from the trust fund for vocational rehabilitation purposes are shown in Section 1, page 13 of this Annual Report.

Vocational rehabilitation counselor fees for the evaluation of the employee, development and implementation of a vocational rehabilitation plan, and preparation of a loss of earning power evaluation are paid by the employer or workers' compensation insurer. This also includes charges by job placement specialists or interpreters, if necessary. The employer or insurer is also responsible for temporary disability benefits while the employee is undergoing vocational rehabilitation.

Nebraska Workers' Compensation Court

Public Information Section

Fiscal Year 2001



Public Information

The court's Public Information section exists for two purposes:

- to inform the public regarding Nebraska workers' compensation law and procedural rules. This is done by public information specialists who field questions from callers on the court's toll-free information line. Also, public information is disseminated by means of the court's Web site, publications, workshops and seminars; and
- to process injury reports filed electronically using Electronic Data Interchange (EDI), and to code and enter paper injury and payment reports into the court's information database.

Providing these services requires eight full-time staff members including three public information specialists, two computer operators, a receptionist/secretary, and an office clerk. Overall supervision and guidance is provided by the public information manager.

Information Line

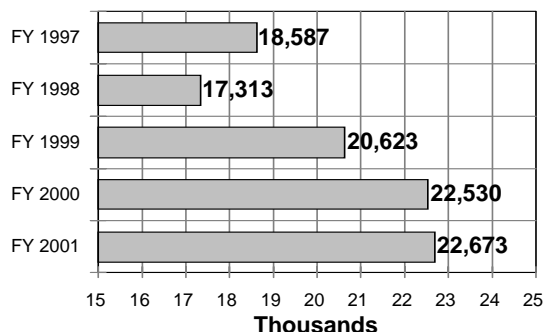
The court's toll-free information line enables the court to serve the public more efficiently and saves the cost of long distance calling. Public information specialists assist callers on the information line Monday through Friday, from 8:00 a.m. to 5:00 p.m. After hours and during weekends and holidays, callers receive instructions to leave a message so that a specialist can return the call on the next working day.

The specialists provide answers to commonly asked questions about workers' compensation in Nebraska or research inquiries for a response, usually within 24 hours. Also, calls can be transferred to other court sections for more information. Court staff do not provide opinions, guesses, or legal advice.

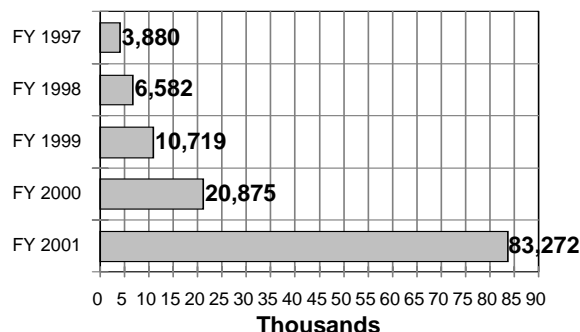
As of June 30, 2001, the information line has received 123,065 calls since it was first made available in 1994. These calls have come from employees, attorneys, employers, insurers, medical and vocational rehabilitation providers, and others in Nebraska and throughout the nation.

Of the 22,673 calls received in FY 2001, the largest caller group was formed of claimants or those calling on behalf of claimants with 6,484 calls (28.6 percent). Attorneys made 3,798 calls to the information line (16.8 percent). This was followed closely by employers with 2,700 calls (11.9 percent) and insurers with 2,546 calls (11.2 percent).

Information Line Calls



Web Site Hits



Web Site

The Public Information section created the court's Web site, located at <http://www.nol.org/workcomp/>, and maintains the site on a day-to-day basis. The site now offers a "Software" page which includes a link to our "Weeks Between Dates and Benefit Calculation" spreadsheet and a Subsequent Report of Injury (SROI) Implementation Guide for Electronic Data Interchange (EDI). In the coming months, the site's overall functionality, design, and ease of use will be upgraded using Macromedia's Dreamweaver, a Web site design and management software.

Public use of the court's Web site increased to 83,272 hits in FY 2001, a 298.9 percent increase from FY 2000. Of these, the "Publications/Forms" page had the most hits with 20,985 (25.2 percent). Nearly half of these were for the Law and Rule Books, which had a combined total of 9,881 hits (11.9 percent). This was followed by the "Frequently Asked Questions" (FAQs) page with 9,155 hits (11.0 percent) and the "EDI" page with 6,358 hits (7.6 percent). The court's Web site server host, Nebraska@ Online, gathers these statistics and it should be noted that they do not include hits to our Web site from State of Nebraska agencies.

Publications

The public information specialists design, write, edit, and maintain an inventory of all publications and forms produced and provided by the court. These include the following: Form 1—First Report of Alleged Occupational Injury or Illness, Form 4—Subsequent Report, Form 10W—Corporate Executive Officer Waiver, Form 10T—Termination of Waiver, Form 12—Insurance Coverage, Form 50—Choice of Doctor, Form 63-1—Request for Independent Medical Examiner, Form 67-2—Notice of Agreement to use a Named Independent Medical Examiner, Rights & Obligations (Pamphlet), Choosing a Doctor for a Work-Related Injury (Pamphlet), Vocational Rehabilitation Services (Pamphlet), Informal Dispute Resolution and Mediation (Pamphlet), The Bulletin (NWCC newsletter), Law Book, Rule Book, and the Annual Report. Many of these publications are available in Spanish.

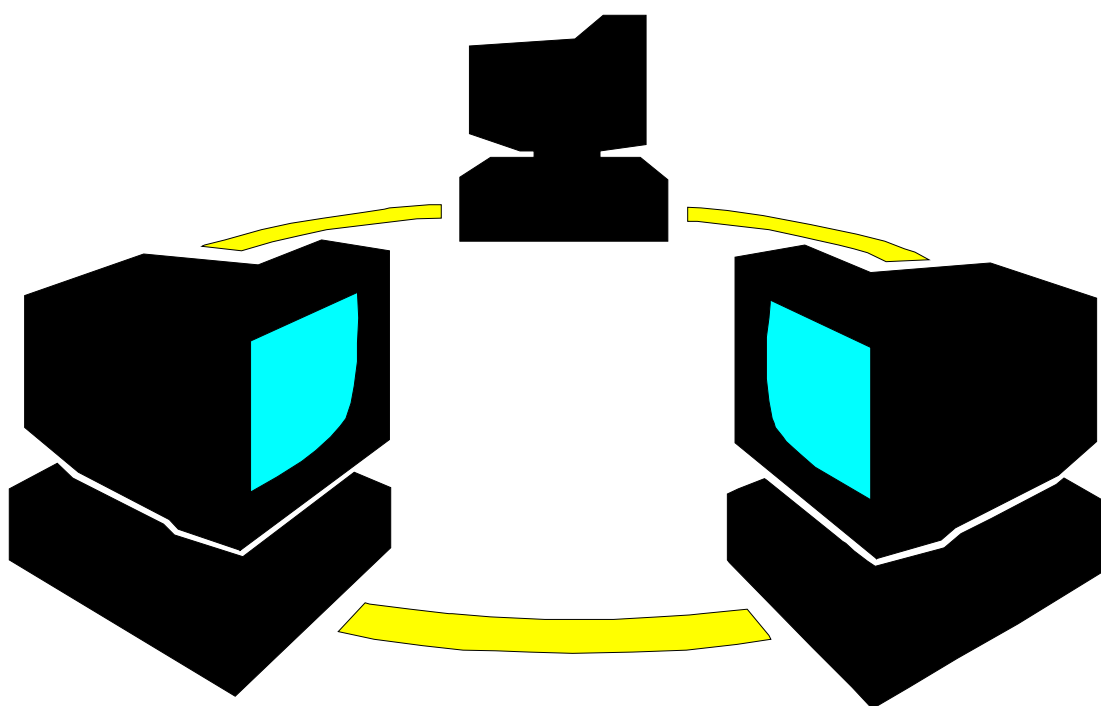
Workshops and Seminars

The public information specialists also assist with planning, preparing, and conducting informational workshops and seminars presented by the court. During FY 2001, court staff have presented information to nearly 550 people in a total of 13 workshops and seminars.

Data Processing

The Public Information section processed over 67,000 first reports and over 55,000 subsequent reports in FY 2001. At the time of publication, approximately 99 percent of all first reports are filed electronically using EDI. The remaining paper first reports and subsequent reports are processed, coded, and entered manually. However, beginning July 1, 2002, all subsequent report information must be submitted electronically as well.

Nebraska Workers' Compensation Court Information Technology Section Fiscal Year 2001



Information Technology

The Information Technology section of the Nebraska Workers' Compensation Court is responsible for the administration and maintenance of the court's computer systems and network. This includes the court's databases relating to first reports of injury, subsequent reporting, vocational rehabilitation, and adjudication which are maintained in Oracle. The court has also made considerable strides in exchanging information through Electronic Data Interchange (EDI). The section maintains an electronic connection with the State of Nebraska's mainframe computers and the database of the National Council on Compensation Insurance (NCCI). The court also takes advantage of Internet access to Secretary of State information related to Corporation and Business Records. Providing these services requires a manager and three full-time staff members.

Fiscal year 2001 Accomplishments

Ending June 30, 2001, the court completed its third full year of managing data on its client/server system, which utilizes an Oracle database. The database currently contains five full years' of information, going back to calendar year 1996 for first reports of injury. The court also added to its historical statistical injury-related information for purposes of performing cross-year analysis. At the end of FY 2001, the court had four fiscal years' worth of this type of historical information.

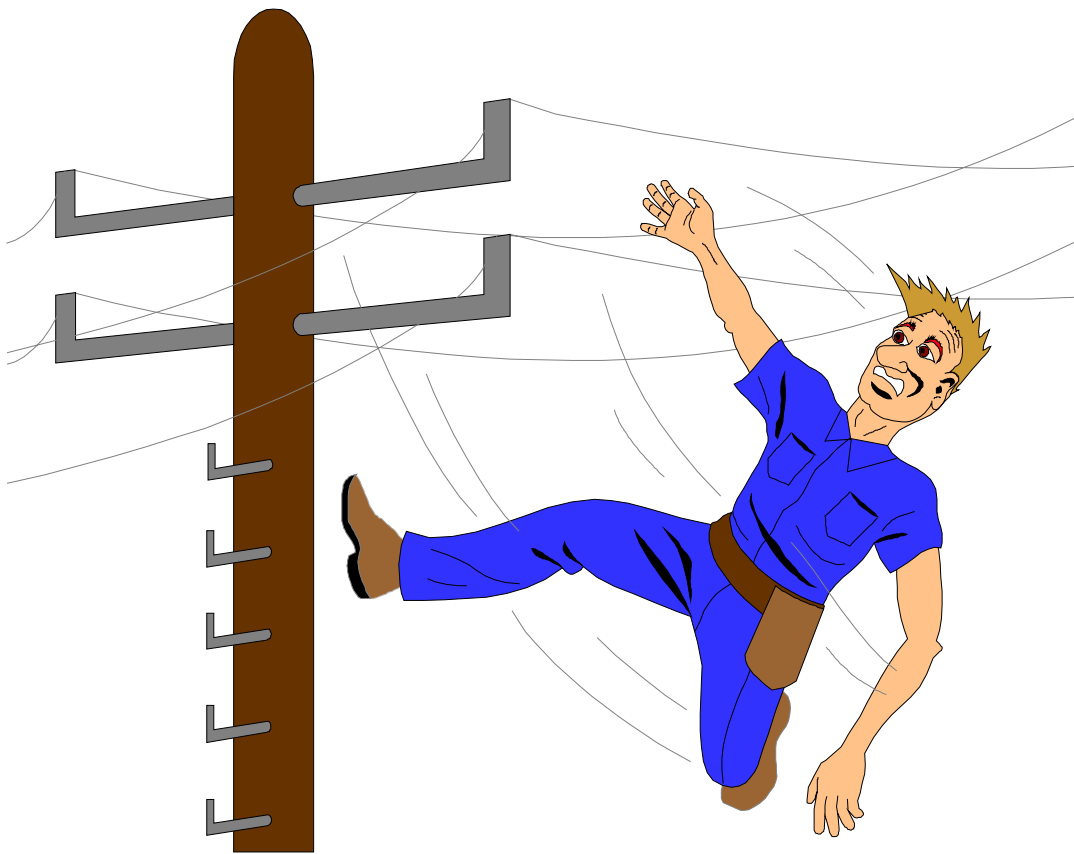
During the fiscal year we did several major upgrades to our Oracle system. We also began the electronic Docket Book project which was implemented the third quarter of calendar year 2001. The court also took its first steps into electronic "files" to familiarize staff with using electronic files and documents in place of paper files and documents.

Electronic Data Interchange Initiative

The court's Electronic Data Interchange (EDI) reporting initiative allows employers, insurers, and others to file certain forms with the court in a computerized format as opposed to sending these forms through the mail. EDI trading partners for the electronic submission of injury reports continued to be added in FY 2001. At the end of the fiscal year, approximately 98 percent of all first reports of injury were coming to the court electronically as compared to about 50 percent the previous year. The court mandated the electronic submission of subsequent reports beginning July 1, 2002.

Nebraska Workers' Compensation Court Nebraska Occupational Injury and Illness Survey

1999



Nebraska Occupational Injury and Illness Survey

Occupational Safety and Health Act

The Occupational Safety and Health Act of 1970 (OSHA) became an official part of the nation's labor laws in 1971. With its passage, Congress declared its intent “. . . to assure as far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”

Under this Act, employers are required to keep records of all work-related deaths, any diagnosed occupational illnesses and any occupational injuries which involve loss of consciousness, restriction of work or motion, transfer to another job, or requires medical treatment beyond first aid. Employers with more than ten (10) workers are required to maintain a log and summary of occupational injuries and illnesses (OSHA No. 200) and a supplementary record (OSHA No. 101)¹ of each occurrence within the calendar year. These records are retained at the work site for five (5) years and must be available for inspection by representatives of the U.S. Department of Labor and the U.S. Department of Health and Human Services. Employers with less than eleven (11) employees and those employers who conduct business in one of the low hazard industries specified by OSHA are generally exempt from these recordkeeping requirements unless they are notified of the necessity to maintain these records for a given year for statistical purposes.

Occupational Injury and Illness Survey

In order to measure and evaluate the efforts in reducing work-related injuries and illnesses, a standardized system to collect, compile and analyze the health and safety statistics was established and implemented. This standardized system enabled data users to identify those industries that needed improvement, to further monitoring and education programs, and allow employers to compare their incidence rates with other employers in the same industry.

The Nebraska Workers' Compensation Court has cooperated with the U.S. Department of Labor and the Bureau of Labor Statistics in conducting an annual survey of Nebraska Employers which has provided these essential work injury and illness statistics since 1971. The 1999 sample surveyed 3,496 employing units in the state.

For information regarding the survey and the results of the Occupational Injury and Illness Survey 1999, visit our Web site at <http://www.nol.org/workcomp/1999NOII.pdf>.

¹In the State of Nebraska the Workers' Compensation Form 1 — First Report of Alleged Occupational Injury or Illness, is used in place of the OSHA No. 101 form.

Nebraska Workers' Compensation Court

Census of Fatal Occupational Injuries (CFOI)

2000



Census of Fatal Occupational Injuries (CFOI)

The following information was provided by the Bureau of Labor Statistics, in cooperation with State and Federal agencies, Census of Fatal Occupational Injuries 2000.

2000 Census of Fatal Occupational Injuries

On-the-job injuries resulted in the deaths of 59 Nebraska workers during 2000, with transportation accidents accounting for 39 percent of these fatalities, according to the Census of Fatal Occupational Injuries (CFOI) released by the Nebraska Workers' Compensation Court.

CFOI used multiple data sources including death certificates, workers' compensation reports, medical examiner reports, and other available federal and state administrative records, to compile a complete, verifiable count of Nebraska fatal workplace injuries. The census covers all traumatic occupational fatalities, including those resulting from injuries to the self-employed, laborers on small farms, government workers, and others too difficult to identify from a single data source.

Besides comprehensive counts of fatal work injuries, the 2000 census provides information on the demographic characteristics of the deceased workers (including age, gender, and race), the occupations and industries the decedents worked in and the circumstances of their tragedies. This wealth of information on hazards in Nebraska workplaces yields vital insights to aid in preventing future workplace fatalities. Safety and health researchers will be able to study patterns of fatal work injuries, identify hazardous activities and equipment, and alert workers to these dangers.

2000 Census Results

The Nebraska Census of Fatal Occupational Injuries recorded 59 fatal workplace injuries during 2000. Other findings of the Census include:

- Transportation accidents were the leading fatal event, accounting for 39 percent of fatal occupational injuries in 2000.
- The highest number of fatally injured workers were 45 to 54 years of age.
- Fifty-seven (97 percent) of these fatally injured workers were men.
- Among industry groups, the largest number of fatal work injuries were in agriculture with 19 deaths, or 32 percent of the total for this period.

For more information regarding the census and the results of the Census of Fatal Occupational Injuries 2000, visit our Web site at <http://www.nol.org/workcomp/2000CFOI.pdf>.

Background of the Program

The Census of Fatal Occupational Injuries, part of the redesigned Bureau of Labor Statistics (BLS) safety and health statistics program, provides the most complete count of fatal work injuries available because it has used multiple state and federal data sources. This is the eighth year that the fatality census has been conducted in all 50 states and the District of Columbia.

Notes